



IN THE MATTER OF:)		
)		
VELMA GREER,)		
)		
Complainant,)		
)		
and)	CHARGE NO:	1999SP0432
)	EEOC NO:	N/A
WAL-MART STORES, INC.,)	ALS NO:	S-11040
)		
Respondent.)		

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). A public hearing was held before me in Springfield on February 26, 2001. The parties have filed their post-hearing briefs. Accordingly, this matter is ripe for a decision.

Complainant contends that she was denied the full enjoyment of Respondent's store when Respondent's personnel grabbed Complainant and required that she verify her purchase. Respondent denies that the incident happened in its store and alternatively contends that any request to have Complainant verify her purchase was not related to her race.

Based on the record in this matter, I make the following findings of fact:

1. Complainant, Velma Greer, an African-American, and some acquaintances went to Respondent's store on August 15, 1998 to make some purchases.

2. After she completed her shopping, Complainant purchased a carton of cigarettes and motioned to a neighbor that she would be waiting for him at a bench in the vestibule near the exit of the store. When she approached the area of the benches, she sat next to another friend, Tom, who was also an African-American. Three Caucasian customers also sat in the bench area with two of the Caucasian customers holding purchases. One of the Caucasian customers held a plant, and the other Caucasian customer held an unspecified box.

3. After Complainant had briefly spoken to Tom, Eleanor Rainey, an elderly female employee of Respondent approached Complainant, touched her on the arm, asserted that an alarm had gone off, and asked Complainant to return to the store. Rainey then took Complainant's store bag, retrieved the receipt and asked Complainant to identify the cashier who had waited on her. At the time of this incident, Respondent's store bag was sufficiently clear so that anyone could see the contents.

4. Rainey went to a cashier, placed the cigarettes back in the bag and returned the bag to Complainant. At that same time, Rainey repeatedly apologized to Complainant and told her that she (Rainey) had made a mistake.

5. At the time of this incident, Respondent used a Sensormatic alarm system designed to track whether the customers paid for certain items. In using the system, Respondent placed a sensor tag on jewelry, cigarettes, prescriptions, and certain clothes that required the checker to deactivate the tag when scanning the item at the checkout counter.

6. At all times pertinent to this case, Respondent kept a logbook on incidents involving the sounding of the alarm. The logbook, which is kept for approximately one week before a new one is generated, contained the identity of the cash register, the teller's number, and the item, but did not otherwise identify the customer or the customer's race. During this time frame, the alarm system went off

between eighty to one hundred times per week, with both African-American and Caucasian customers being asked to return to the store to verify their purchases.

7. At the time of the August 15, 1998 incident, Respondent employed Betty Joniak as a people greeter at the entrance of the store and Eleanor Rainey as an exit greeter. Both Joniak and Rainey are Caucasian. Under Respondent's system, the alarm sounds when the customer gets to within a foot of a metal post stationed near the exit door, and the exit greeter would typically be the individual responding to the alarm.

8. On January 25, 1999 Complainant filed her Charge of Discrimination alleging that she had been denied the full use and enjoyment of Respondent's store when Respondent's personnel required her to verify her purchase.

Conclusions of Law

1. Complainant is an individual claiming to have been aggrieved by a denial of the full and equal enjoyment of the facility and services of a public accommodation on the basis of race discrimination prohibited by the Human Rights Act, 775 ILCS 5/5-102(A).

2. Respondent is a place of public accommodation as that term is defined under the Human Rights Act, 775 ILCS 5/5-101(A)(1).

3. Complainant failed to establish a *prima facie* case of unlawful discrimination in the full and equal enjoyment of public accommodations on the basis of Complainant's race when it required that Complainant verify her purchase.

Determination

Complainant failed to establish by a preponderance of the evidence that she was the victim of race discrimination when Respondent required that she verify her purchase while in Respondent's store.

Discussion

In a case alleging discrimination based on race, the Commission and the courts have applied a three-step analysis to determine whether there has been a violation of the Human Rights Act. (See, for example, **Canady and Caterpillar, Inc.**, ___ Ill. HRC Rep. ___ (1994SA0027, Match 17, 1998) and **Loyola University of Chicago v. Illinois Human Rights Commission**, 149 Ill.App.3d 8, 500 N.E.2d 639, 102 Ill.Dec. 746 (1st Dist., 3rd Div. 1986).) Under this approach, a complainant must first establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. Then, the burden shifts to the respondent to articulate a legitimate non-discriminatory reason for its action taken against the complainant. If the respondent is successful in its articulation, the presumption of unlawful discrimination is no longer present in the case (see, **Texas Department of Community Affairs v. Burdine**, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981)), and the complainant is required to prove by a preponderance of the evidence that the respondent's articulated, non-discriminatory reason is a pretext for unlawful discrimination.

While this three-step process has been used primarily in an employment setting, the Commission has approved of its use in resolving cases alleging discriminatory denials in the use and enjoyment of public places of accommodation. (See, for example, **Davis and Ben Schwartz Food Mart**, 23 Ill. HRC Rep. 2 (1986).) Typically, a *prima facie* case of a denial or refusal to afford full and equal enjoyment of a place of public accommodation requires a complainant to show that: (1) she is a member of a protected class; (2) she was denied the full and equal enjoyment of the subject facility; and (3) others not within the protected class were afforded full enjoyment of the facility. See, **Davis**, and **Hornick v. Noyes**, 708 F.2d 321 (7th Cir. 1983).

Complainant submits that she was the victim of race discrimination when one of Respondent's employees required her to return to the store and verify her purchase of

cigarettes. Respondent initially contends that if the incident occurred, it occurred at another store since its own internal investigation indicated that no one was aware of Complainant's incident. It alternatively submits that if the incident did actually occur at its store, Complainant failed to establish any racial component to the request to verify her purchase since the record shows that both African-American and Caucasian customers who have been subjects of the alarm have been asked to return to the store to verify their purchases.

As to the first issue, I find that Complainant was credible with respect to the question as to whether the incident occurred in Respondent's store, but that I believe Complainant was mistaken as to the identity of the employee who asked her to return to the store. Specifically, Complainant identified Betty Joniak as the individual who approached her and asked that she return to the store. Joniak, however, appeared credible in her denial as to her participation in the incident, and I would note that under Respondent's policy the exit greeter (i.e., Eleanor Rainey) typically would have been assigned the task of asking customers who tripped the alarm to step back into the store. Moreover, while Respondent's store manager testified that no one employed at the store in February of 1999 recalled the August 15, 1998 incident, the store manager never expressly stated that she asked Rainey about the incident. Given the fact that at the fact-finding conference Complainant could only describe the offending employee as an "elderly white female", and the fact that Rainey who was on duty as the exit greeter fits that description, I find that Rainey was most likely the employee involved with the incident.

However, the resolution of the question as to whether Rainey or Joniak approached Complainant on the day of the incident, does not answer the dispositive question as to whether Rainey's decision to require Complainant to verify her purchase was motivated by Complainant's race. To that end, Complainant argues that race was

the likely motivation for the conduct of Rainey or Joniak since: (1) the stated basis for the reason for the purchase verification, i.e. that an alarm had gone off, was not factually correct; and (2) Rainey/Joniak did not ask any of the Caucasian customers seated in the vestibule to verify their purchases. The record, though, does not support Complainant's contention that she was similarly situated to the Caucasian customers waiting in the vestibule or that she was otherwise singled out to verify her purchase because of her race.

Initially, the record shows that at the time of the August 15, 1998 incident, Respondent's Sensormatic alarm system was being triggered approximately eighty to one hundred times per week, and that there was no evidence that the alarm was triggered disproportionately by one race of customer rather than another. Moreover, because the sensor tag was placed on only certain items, it would be difficult show a racial component in the sounding of the alarm since the alarm could only go off when a specific item was being purchased or taken from the store. Thus, where Complainant asserted that she had never heard an alarm go off in Respondent's store on any of her trips to Respondent's store, Complainant cannot rebut Respondent's evidence that the alarm went off regardless of the race of the individual walking to the security posts with tagged merchandise. Indeed, Joniak's testimony that she had set off the alarm at one time and was asked to verify her purchase only reinforces the notion that Respondent's machine was not calibrated towards or against any particular race.

True enough, Complainant's testimony that she did not hear an alarm prior to Rainey coming over to her to ask her to return to the store raises an issue as to the reason for Rainey's request. However, the record suggests that the alarm could have gone off as represented to Complainant given the un rebutted testimony that Complainant's purchase of cigarettes was one of the few types of items that had a sensor tag. Too, Complainant's testimony that Rainey/Joniak made several attempts to

apologize to her after Complainant's purchase had been verified belies Complainant's suggestion that Rainey/Joniak had a discriminatory motive to hassle African-American customers with respect to their purchases. Hence, in the absence of any evidence that Respondent had a pattern of stopping only African-American customers to ask about their purchases, Complainant's testimony merely establishes, at best, that Rainey had made a mistake in initially believing either that Complainant had not paid for her purchase or that the cashier had failed to deactivate the sensor tag.¹

The focus, though, of Complainant's case is her contention that Rainey/Joniak discriminated against her because she did not ask either Caucasian customer holding purchases in the vestibule to verify their purchases. However, in order for these customers to be similarly situated to Complainant, Complainant had to show that Rainey/Joniak failed to ask these customers to verify their purchases after there was a claim that they had tripped the alarm system. Again, given Complainant's testimony that she had never witnessed an alarm going off at any of her visits to Respondent's store, Complainant failed to provide any evidence that Respondent ignored its practice of confronting Caucasian customers whom it believed had tripped the alarm. More important, though, neither Caucasian customer identified by Complainant would qualify as a suitable comparative for her discrimination claim since Complainant failed to show that either customer had in their possession an item (i.e., a plant or an unspecified box) that could have tripped the alarm system. Simply put, where Complainant testified that anyone could see the contents of her bag, it was entirely reasonable for Rainey to only ask Complainant to verify her purchase since Complainant's purchase was the only visible item in the vestibule area that could have potentially tripped the alarm system.

¹ Complainant also testified about an African-American individual who discouraged Rainey/Joniak from apologizing to her. However, it is unclear from this record whether that individual was a member of Respondent's store personnel, and Respondent's records do not otherwise identify this individual as a member of its staff.

Finally, Complainant makes much of the fact that Respondent's alarm system was designed to deter theft and further asserts that African-American customers were stopped in an effort to enforce this policy. However, Complainant lacks any evidence to support the alleged uneven treatment with respect to Respondent's customers. Moreover, in view of the fact that Illinois shopkeepers enjoy a statutory privilege to make reasonable and even-handed inquiries about purchases in an effort to prevent or detect theft, I must disagree with Complainant that she was denied an equal enjoyment of Respondent's store. (See, 720 ILCS 5/16A-5.) This is particularly true under this record since Complainant was able to complete her shopping at Respondent's store, and was only briefly detained in an effort to clarify whether she had actually made a purchase of cigarettes. See also, **Davis**, 23 Ill. HRC Rep. at 14, where the Commission similarly found no denial or refusal to afford a full and equal enjoyment of a place of public accommodation where the complainant had been able to complete her shopping at respondent's store even though the record showed an inconsistency in respondent's search of customers' handbags.

Recommendation

For all of the above reasons, it is recommended that the Complaint and the underlying Charge of Discrimination of Velma Greer be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 7th DAY OF JANUARY, 2002.